



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 22, 2011

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2011-03895

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412617 (DPD Request # 2011-00344 and 00345).

The Dallas Police Department (the "department") received two requests for information pertaining to the termination of a named officer and a specified report. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the requestor specifically excluded social security numbers from her requests. Accordingly, the submitted social security numbers are not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the requests, and the department is not required to release the social security numbers you have marked in response to the requests.

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, including section 550.065 of the Transportation Code. The submitted information contains a CR-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.<sup>2</sup> *Id.* The requestor has not provided the department with two of the three pieces of information; thus, the department must withhold the submitted CR-3 accident report, which you have marked, under section 552.101 in conjunction with section 550.065(b).

We note the submitted information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.<sup>3</sup> Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted

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<sup>2</sup>Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. You have marked information that the department seeks to withhold on this basis. Upon review, however, we determine this information is of legitimate public interest in this context. *See Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest in facts tending to support an allegation of criminal activity" (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Therefore, because this information is of legitimate public interest in this instance, it is not confidential under common-law privacy and the department may not withhold it under section 552.101.

Section 552.108(a)(1) of the Government Code excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state some of the submitted information, including the submitted dash-cam video, relates to a pending criminal investigation. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

You also contend the submitted information contains the cellular telephone number of a police officer that is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Gov't Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." ORD 506.

at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.*

You inform us the cellular telephone number you have marked is assigned to a department officer in the field to carry out his law enforcement responsibilities. You assert the release of this information would interfere with law enforcement and crime prevention. Based on your representations and our review of the information at issue, we conclude that the department may withhold the information you have marked under section 552.108(b)(1) of the Government Code.

You assert some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(2) excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). The department must withhold the information we have marked in the submitted personnel records under section 552.117(a)(2). You also seek to withhold information in an arrest report under section 552.117. Section 552.117 applies only to records that a governmental body holds in an employment capacity. The arrest report at issue consists of a law enforcement record, and you do not explain how the department holds it in an employment capacity. Accordingly, you have not established any of the information in the arrest report is excepted from disclosure under section 552.117(a)(2).

However, section 552.1175 of the Government Code may be applicable to some of the information in the arrest report. Section 552.1175(b) provides the following:

Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). Accordingly, the department must withhold the information we have marked under section 552.1175 if it pertains to an individual who is currently a licensed peace officer and who elects to restrict access to this information in accordance with

section 552.1175(b). However, the department may not withhold this information under section 552.1175 if the individual either is not a currently licensed peace officer or he does not elect to restrict access to this information in accordance with section 552.1175(b).

You assert some of the remaining information is excepted under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). We agree the department must withhold the Texas motor vehicle record information you have marked under section 552.130.<sup>4</sup>

Section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). You inform us an employee's identification number is used in conjunction with one additional digit in order to access the employee's credit union account. Thus, we find the department must withhold the identification number you have marked under section 552.136 of the Government Code.

To conclude, the department must withhold the following: the submitted CR-3 accident report you have marked under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code; the information we have marked under sections 552.102 and 552.117(a)(2) of the Government Code; and the information you have marked under sections 552.130 and 552.136 of the Government Code. The department must also withhold the information we have marked under section 552.1175 of the Government Code if it pertains to an individual who is currently a licensed peace officer and who elects to restrict access to this information in accordance with section 552.1175(b). However, the department may not withhold this information under section 552.1175 if the individual either is not a currently licensed peace officer or he has not elected to restrict access to this information in accordance with section 552.1175(b). The department may withhold the submitted information you have marked under section 552.108 of the Government Code. The department must release the remaining responsive information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

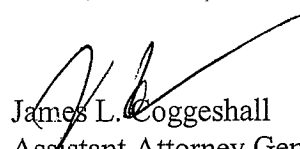
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

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<sup>4</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bs

Ref: ID# 412617

Enc. Submitted documents

c: Requestor  
(w/o enclosures)